

Significant New Use Rule: a useful tool for chemical regulation

The US Environmental Protection Agency (EPA) is responsible for determining whether chemicals can be imported, produced, and used in the United States. The EPA approves new chemicals before they're allowed on the market, and it also reviews chemicals that are already in products or are otherwise used in the economy. When the EPA reviews a chemical for possible impacts to people and the environment, it looks at how the chemical is being used, or how it will be used if it's a new chemical. For most chemicals, the EPA makes its decisions under a law called the Toxic Substances Control Act, or TSCA.

Sometimes the EPA finds that the way a chemical currently is used in the United States is not of concern, but it believes that, at some point, new uses of the chemical that may not be safe could make their way into the US market. There are any number of reasons why the EPA may believe such new uses could show up. The chemical might be a substitute for other chemicals. Maybe it's approved for different uses in other countries. Or perhaps the chemical was once used in a certain way in this country and although it no longer is, it's possible that at some point there may be interest in bringing back that use. Unless the EPA has already prohibited the use, anyone would be free to start it back up in this country.

In such cases, the EPA may issue under TSCA what's called a significant new use rule, or SNUR. What a SNUR does is require anyone who wants to use a chemical in a new way to first show the EPA that the new use of the chemical is not of concern to people and the environment. Only if they can do so will the EPA allow it to enter the marketplace.

Let's look at an example. Makers of building materials like adhesives and floor tile once added asbestos to those products, but they haven't done so for many years. However, those uses are not banned and if anyone wanted to start importing asbestos-containing adhesives or floor tile, or to begin making them here, they could legally do so right now. However, there would be concerns with anyone restarting such uses because exposure to asbestos can cause serious diseases such as cancer. A SNUR would require anyone who wanted to import or make asbestos-containing building materials to notify the EPA of their intent to do so and show that the new use of asbestos-containing building materials would not be of concern.

This is exactly what the EPA has done with asbestos. We have proposed a TSCA rule saying that while adhesives, tile, and other certain asbestos uses are no longer in commerce in the United States, they have not been banned and may present concern if their use returned. Using its SNUR authority, the EPA is prohibiting the restart of these uses of asbestos unless they can be shown to not be of concern. While the SNUR is not a complete solution to addressing the health impacts of exposure to asbestos, it's a step in the right direction.

New uses of chemicals often not only are not of concern, but are welcome as serving new, valuable roles in the economy. Yet where existing uses are not a problem but there may be concerns with new uses, this little-known tool in the TSCA legal toolbox, the significant new use rule, can play an important role in chemicals regulation.